IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 618/2006

Smt. S.M. Manjrekar,
Lotus Apartments, Ground Floor,
Chandra Waddo,
Fatorda, Near Tata Garage, Margao, Goa. ..... Petitioner.

V/s.

1. Shri Vincent Rosario Fernandes,
aged 46 years, r/o. House No.165,
Ranwaddo, Betalbatim, Salcete, Goa.

2. The State of Goa,
through its Chief Secretary,
Secretariat, Porvorim, Goa.

3. The Collector of South Goa,
Collectorate Building
Margao, Salcete, Goa.

4. Administrator of Communidades,
South Zone, Margao, having his Office
at Margao, Goa.

5. Communidades of Betalbatim,
having Office at Parochial House
of Church of Our Lady of Remedious,
Betalbatim, through its Attorney. ..... Respondents.

Mrs. A. A. Agni, Advocate for the petitioner.

Mr. S. D. Padiyar, Advocate for the respondent No.1.

Mr. S. R. Rivonkar, Government Advocate for the respondents No.2 and 3.

Mr. Abjhay Nachinolkar, Advocate for the respondent No.5.

CORAM : S.A. BOBDE, J.

DATE : 23rd March, 2007.

ORAL JUDGMENT :

Rule, returnable forthwith. Heard by consent.

2. The petitioner is a defendant in the suit, filed by the respondent-plaintiff. In fact, an order passed by the petitioner while functioning as an Administrator of the Communidades is sought to be set aside in the suit.

3. In the plaint, the respondent alleged that defendant No.5 i.e. the petitioner herein had acted at the instance of a political person and, therefore, the order was bad in law and liable to be set aside. The respondent claims damages on account of the said order.

4. The petitioner-defendant No.5 applied for better particulars about identity of the political person at whose instance she alleged to have passed that order. In reply to this application, the respondent No.1 disclosed the name of one Micky Pacheco, who was then a Minister in the Government.

5. Accordingly, the respondent submitted the following issue to be framed by the Court :

"Whether the defendants prove that the suit is bad for non-joinder of necessary party i.e. Mr. Mickey Pacheco MLA of Benaulim ?"

The trial Court, however, observed in the order rejecting the prayer for framing the above issue that there is no allegation in the plaint that the said Pacheco had any role to play in the order and it was the plaintiff's allegation that the implementation and execution of the order was at the behest of said Pacheco. Even if it is agreed that the plaint does not disclose the allegation that the order was passed at the instance of of said said Pacheco, it is clear that it was the passing of the order which was said to be mala fide and at the instance of the said Pacheco. In fact, the respondents have clarified in their reply to the application for better particulars that it is their case that the said order was passed at the instance of said Pacheco. The trial Court could not have, therefore, overlooked this.

6. In this view of the matter, I am of the view that the issue as proposed and reproduced above is liable to be framed for a proper adjudication of the suit. It is, however, made clear that the issue whether Mr. Mickey Pacheco is a necessary party or not will be decided on its own merits. Rule disposed of accordingly.

S.A. BOBDE, J.

ssm.